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Pro se, Proposed Intervenor

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELIZABETH A. HOLMES and
RAMESH "SUNNY" BALWANI,

Defendants.

Case No: 18-cr-00258-EJD-2

[Mistakenly assigned civil case number
5:22-mc-80071-EJD]

DECLARATION IN SUPPORT OF
STRIKING JUDGE EDWARD
DAVILA UNDER 28 USC 144

Date: April 25, 2022

Time: 1:30PM

Judge: **TBD**

[Case needs to be re-assigned to a
different judge pursuant to declaration
filed on March 14, 2022 and herein and
then set up in CM/ECF to ensure all
parties in related criminal case are e-
served]

DECLARATION OF MATTHEW RAFAT

1. I, Matthew Rafat, hereby state and declare as follows:
2. I reside in Santa Clara County, California and am a member of the press. The facts stated herein are true of my own personal knowledge, except for those based on information and belief, and as to those facts, I believe them to be true. If called as a witness, I could and would competently testify to the following facts:
3. On March 14, 2022, I submitted two filings: 1) motion for intervenor status; and 2) a document striking Judge Edward J. Davila in the Northern District, San Jose division, from further proceedings related to myself. The motion stated, "I believe in good faith Judge Edward J. Davila has a personal bias or prejudice against me for reasons stated in detail in a concurrently filed motion. That FRCP 24 motion cites facts relating to alleged violations of the AO Manual by Judge Davila and/or his staff."
4. The document referenced directly above cited 18 USC 144 rather than 28 USC 144; nevertheless, the substance complied with the requirements of 28 USC 144, and once filed on March 14, 2022, bars Judge Edward J. Davila from further involvement in matters related to the undersigned in *USA v. Balwani*. See 28 USC 144: "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding."
5. Despite the filing of a peremptory strike against Judge Davila, on March 16, 2022, Northern District staff member Snooki Puli wrote, "The hearing date for your motion [for intervenor status in 18-cr-00258-EJD-2] is set for April 25, 2022 at 1:30pm before Judge Davila in Courtroom 4 at the federal courthouse in San Jose." Cita Escolano, the criminal docket clerk, was copied on the email.

6. It appears court staff assigned a civil case designation in CM/ECF to the undersigned's filings as follows: 5:22-mc-80071-EJD. It is unclear whether this *civil* designation within CM/ECF is set to e-serve relevant parties in *USA vs. Balwani*, 18-cr-00258-EJD-2, the *criminal* case in which the undersigned is seeking intervenor status. In addition, the CM/ECF filing for 5:22-mc-80071-EJD now states, "no associations for this case" under "Associated Cases." Furthermore, as of today, despite the fact that the undersigned's declaration filed on March 14, 2022 requires assignment of another judge to hear his motion for intervenor status, no notification of judicial assignment has been received.
7. After being unable to receive a rational explanation for why his motion was classified as a civil matter and not linked to the relevant criminal case, the undersigned spoke today via amplified telephone with a "William" or "Ryan" in the Northern District, who indicated he would take the issues above to his supervisor; however, at end of day, the issues above have not been explained or resolved.
8. Local Rule 5-1 allows the undersigned to e-file this document and others: "After manually filing case-initiating documents, pro se parties may file subsequent documents in the same case manually, or may register for ECF and file subsequent documents in the same case electronically."
9. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed March 16, 2022 at San Jose, California.

Dated: March 16, 2022


Matthew Rafat

CERTIFICATE OF GOOD FAITH

The above filing is made in good faith.

Dated: March 16, 2022


Matthew Rafat

CERTIFICATE OF SERVICE

I hereby certify that on **March 16, 2022**, a copy of this filing and proposed order was delivered via email on all counsel of record by the undersigned to this case. Counsel of record are part of the CM/ECF system and have therefore consented to electronic service. If any counsel indicates in writing they wish to receive a paper copy of this filing, I further certify that I or another person will mail them once given their preferred address. A chambers copy will be mailed to the Clerk's Office (Robert F. Peckham Federal Building & U.S. Courthouse, 280 South 1st Street, Room 2112, San Jose, CA 95113) pursuant to Judge Davila's standing order.


Matthew Rafat